

## LABOUR DEPARTMENT

The 12th August, 1981

No. 9(1) 81-8Lab./8948.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and management of M/s. Everest Steel Fabricators, Tigaon Road, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,  
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 67 of 1979

*between*

SHRI JAG MOHAN AND THE RESPONDENT MANAGEMENT OF M/S. EVEREST  
STEEL FABRICATORS, TIGAON ROAD, BALLABGARH

Shri Darshan Singh for the workman.

Shri R.C. Sharma for the management.

## AWARD

This reference No. 67 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/99-79/52372, dated 11th December, 1979 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Jag Mohan workman and the respondent management of M/s. Everest Steel Fabricators, Tigaon Road, Ballabgarh. The term of reference was:—

Whether the termination of services of Shri Jag Mohan was justified and in order?  
If not, to what relief is he entitled?

After recording this reference, notices were sent to the parties. The parties filed their pleadings and on the pleadings of the parties, the issue as per reference was struck out on 12th February, 1980 and the case was fixed for the evidence of the management. On 12th February, 1980, the management closed their evidence after filing the two documents Ex. M-1 and an application for appointment of the workman and Ex. M-2 the order of termination dated 10th September, 1979 of the workman and produced two witnesses MW-1 Shri B.M. Mittal, Partner of the respondent management who supported the case of the management and MW-2 Shri Jaswant Singh Supervisor of the respondent management who also supported the case of the management. The representative of the management closed his evidence on 15th May, 1980. The case was fixed for 11th June, 1980 for the evidence of the workman.

The demand notice and claim statement of the workman clears the case of the workman. In the demand notice the workman has stated that he was working in the factory since 20th December, 1975 and the management terminated the services on 12th September, 1979 without giving any notice, chargesheet or any enquiry against the workman. He was drawing Rs. 250 p. m. at the time of termination. He has claimed his re-instatement with full back wages and continuity of service. On the other hand the respondent management has stated in the written statement that claimant has joined the services on 19th February, 1979 on probation. The claimant was covered by the Model Standing Order of the factory and his services were not confirmed by the management. The management has terminated the services of the workman on 11th September, 1979 as he was on probation and thus this is a case of termination of service of a probationer. It is admitted in the written statement

that he was drawing Rs. 250/- P.M. at the time of termination of services. It is again admitted that the termination of services is without any notice because he was probationer and it was not necessary to give any notice or charge sheet. They further denied the other allegation of the claimant. The management has produced Ex. M-1 an application for the appointment of the claimant which bears thumb-impression of the claimant. It is clearly written in the application that the claimant has appointed on probation for six months at the salary of Rs. 190/- p.m. Ex.M-2 dated 10th September, 1979 is a letter from the management to terminate the service of the petitioner which was put on the notice board for information as shown at mark 'B' of the document.

The respondent management closed their evidence on 15th May, 1980 and the case was fixed for the evidence of the workman on 11th June, 1980. From 11th June, 1980 to 27th April, 1981 the case adjourned for evidence of the workman. The case was adjourned twelve times. But no evidence of the workman came present to give his own witness, even the workman did not appear in the Court during this period, no statement of workman was recorded. After so many adjournments the case came on 27th April, 1981, for the workman evidence. On that day my predecessor passed the order "that the case was fixed for the evidence of the workman but no evidence of the workman is present. So many adjournments have been granted and opportunity given to the workman to produce his evidence but he failed to do so. I feel that the workman is not interested to give his evidence and I order that the evidence of the workman be closed". The evidence of the management has already been recorded. In this case the workman has got refer this reference to this Court after that he has not appeared even to give his own statement. After giving so many opportunities he has failed to appear. In these circumstances nothing left to choose except to decide that the workman has no dispute with the respondent management. He might have settled the dispute himself with the management in the absence of any evidence from the workman. I presume that there is no dispute between Shri Jag Mohan, workman and the respondent management of M/s Everest Steel Fabricators, Tigaon Road, Ballabgarh. No order as to costs. This may be read an answer of this reference.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Dated 14th July, 1981.

Endst. No. 2390, dated 31st July, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above-said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

No. 9(1)81-8Lab/8949.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, Cotton in respect of the dispute between the workman and the management of M/s. East India Manufacturing Co. Ltd., Ajanta Mill Department, NIT, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER  
LABOUR COURT, HARYANA, FARIDABAD  
Reference No. 443 of 1980

between

SHRI RAM PIAREY WORKMAN AND THE MANAGEMENT OF M/S. EAST  
INDIA COTTON MANUFACTURING CO. LIMITED, AJANTA MILL  
DEPARTMENT, N.I.T., FARIDABAD

Shri Yoginder Singh, for the workman.

Shri R. C. Sharma, for the management.

## AWARD

This reference No. 443 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/166-80/49732, dated 17th September, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Ram Pyarey, workman and the respondent-management of M/s. East India Cotton Mfg. Co. Ltd., Ajanta Mill Department, N.I.T., Faridabad. The term of the reference was :—

Whether the termination of services of Shri Ram Pyare is justified and in order ?  
If not, to what relief is he entitled ?

After receiving this reference, notices were issued to the parties. The parties came present and filed their pleadings. On the pleadings of the parties, following issues were framed :—

(i) Whether the claimant is not a workman under the definition of Industrial Disputes Act, 1947, which is as under —

(ii) As per reference.

“workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person :—

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934 ; or

(ii) who is employed in the police service or as an officer or other employee of a prison ; or

(iii) who is employed mainly in a managerial or administrative capacity ; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

(ii) Whether the termination of the workman is proper, justified and in order ?  
If not to what relief is he entitled ?

(iii) Relief.

According to the order of the Court issue No. 1 be treated as preliminary issue and decided first. The parties led their evidence on the issue. The case of the workman according to the demand notice is that the claimant was appointed as printing jobber on 1st May, 1968, at the salary of Rs. 582. He has used to do the work with his own hands. On 4th August, 1979, the respondent without giving any notice terminated the service of the claimant. On 11th August, 1979, the claimant sent a telegram. The respondent refused to take the claimant on duty on 13th August, 1979. He submitted a complaint to the Labour Inspector and gave a demand notice on 22nd August, 1979. According to the written statement, the respondent has put his case in this way that the claimant was working as supervisor of the shift having control 130 or more workers in shift of a departments. He was also responsible to

give and take job and also to give the directions for performance of work to the workers working under him. He was directly answerable to the management. He was drawing Rs. 582 p.m. He could recommend leave of the workmen working under him. So he does not come under the definition of workman as defined under section 2(a) of Industrial Disputes Act, 1947. In the written statement the respondent has denied that the claimant was working as a jobber rather he was shift supervisor. The claimant himself has absented from duty. He remained absent continuously without leave application which was a serious act of misconduct and specially it is a very serious matter when a responsible person remained absent without any authorisation. The respondent-management produced documentary evidence Ex. M-1 to M-21 and produced two oral witnesses MW-1 Shri Mahesh Chand, jobber of the respondent company and MW-2 Shri Kuldip Raj, time office incharge of the respondent-management and closed his evidence. On the other hand the claimant produced two documents Ex. W-1 and W-2 and his own statement as WW-1 and closed his case. My finding on issue No. 1 is as under :—

**Issue No. 1.**—Issue No. 1 is whether the claimant is not a workman under the definition of Industrial Disputes Act, 1947. To prove this issue the respondent management has produced Ex. M-1, an application of the claimant which is signed by the workman and was appointed as supervisor, order dated 27th April, 1976, on the application. Ex. M-2 to M-6 applications of the workman on which the claimant has sanctioned leave to the workmen. Ex. M-15 a trial form of the respondent-management by which the management has put the claimant as supervisor on trial for some days. Ex. M-17, 18 and 19 are sheets of the respondent concerned showing the designation, date of joining, salaries, etc. The name of the claimant on these sheets is shown at serial No. 5. The management produced Ex. M-7 to M-14 the attendance sheet of the mill staff from 12th September, 1976 to 11th March, 1979. The claimant signatures are at mark 'A' on these sheets. Ex. M-20 is a statement of mill staff salary for the month of May, 1979 and Ex. M-21 is a copy of certified standing orders for the workers and produced Shri Mahesh Chand as MW-1 who is working in the respondent-management at the job of Jobber. He has stated in his statement that he is working since 1970 and initially he started as helper. He was promoted as printer and finally promoted to a designation of jobber. One jobber look after four tables to work on. There are about 15 persons on each table. There used to be 40 tables which were supervised by two supervisors. There are seven Khatahs each Khatahs having four tables and two supervisors are controlling these Khatahs. There are three to four Khatahs under the supervisor and there are three to four jobber under a supervisor. He has become a jobber in 1976. When he was promoted as a jobber and the claimant was promoted as supervisor. The claimant used to assign duties to the jobbers who were working under him. All the workers used to get the instructions from the supervisor as to what and how a particular work has been done. The jobber and below have been issued a gate passes which also works as attendance card whereas supervisor who are above them do not have any such gate pass/attendance cards. He stated the difference between staff member and workman, is that the staff member had different gate to enter. The supervisor enter the factory from that gate through which the General Manager of the company enter it. The claimant used to enter the factory from the gate which was used by the General Manager etc. and not by that gate which was used by workmen. The claimant was a supervisor and used to sanction leave of the workmen. Supervisor used to get the increment in the month of January, whereas the workmen used to get the increment in the month August, every year. He further stated in his cross-examination that a jobber cannot come and go through the gate meant for the staff. According to his statement in cross-examination there are only two supervisors in the factory one is Sopan Ram and other claimant. In his cross-examination he denied the suggestion that the claimant used to work with his own hand. He did not even bring the material from the design room. He ordered to the workman to collect such material. He denied the suggestion about setting the design on the table by the claimant rather this work was done by the jobber. He has further stated in his cross-examination that design job was done in the supervision of jobber. The actual work was done by jobber or workmen. The claimant has to do with his own hand the only work of recommunication, sanction of leave and

writing of production. The work of production writing can take only 30 minutes. The claimant used to call the explanation of the workmen working under him. The claimant used to do his work in Hindi and English. He further stated in his cross-examination that the claimant had the authority for stopping the workmen for calling them on overtime duty. The witness MW-3 also supported the case of the management. He stated in his statement that he is working in the respondent factory since 1st July, 1970. He identifies the signatures of the claimant on Ex. M-1 to Ex. M-4. He has identified all the signatures of the claimant on the record. He had further stated that attendance and the payment of wages register in the respondent factory are separate for the workman and the supervisor and they are known as staff. The witness has brought the register of the respondent management in which the claimant signed in the staff register and not in the workers register. According to him the members of the staff put their own signatures on the sheets having on the gate through which they enter the factory while the workers have to give their card to be signed by the time office's staff for their attendance. He has also brought attendance sheet for the year 1976-77. The claimant's signature exist on these attendance sheet as staff member which are Ex. M-7 to M-14. The witness identified the signatures of the claimant at mark 'A'. On the above documents because he was working with him and seen him reading and writing. He further stated in his statement that increment of the staff is given in the month of January every year. Ex. M-17 and M-19 are such sheets of increments in which the name of claimant is present. He further stated that the salary of the supervisor drawing Rs. 500 or more used to be sent to the Bank for disbursement. The list of such officer was sent to the Bank with amount, such a list is Ex. M-20 and M-21.

The claimant in support of his case he produced Ex. W-1 a identity card for the year 4th February, 1979 and Ex. W-2 a identity card as jobber dated 1st July, 1972, and gave his statement as witness. The claimant as witness. The claimant in his cross-examination admits that there are two gates of the factory for the entrance which is meant for supervisory staff and other for workers. He further stated that I cannot say from which gate he used to enter. It is very surprising that the claimant has forgot from which gate he enters in the factory I think by saying this he is concealing the facts that he used to enter from the officer gate. He further stated that he used to enter from both the gate. He denied his signature on Ex. M-7 to Ex. M-14 at mark 'A' but seeing the signature by the open eye it is very clear that these documents bear the signature of the claimant. One cannot conceal such evidence which are clear on the records and in my view the claimant is concealing all the facts. The respondent management case is that the workmen get the cards for their attendance. The claimant admits in his cross-examination that his card was stopped and further admits that the jobbers used to get the attendance cards. He further stated that he cannot say when his attendance was stopped by card. He further admits in his cross-examination that 17 persons were working under him and he used to get the increment with the staff members in the month of January, every year. He denies in his cross-examination about the letter of promotion as supervisor. He admits these suggestions that he used to get the salary through Bank. He further states that he never gets his salary above Rs. 500 through bank. He further stated that he was only a jobber and nothing else. In his re-examination he admits that he used to mark attendance on gate pass as well as paper. By the admission and denial which he has made in his statement prove the case of the management issue No. 1 that he was supervisor and draw Rs. more than 500. The claimant has failed to prove that he was working as jobber in the respondent factory at the time of termination of his service. On the other hand the respondent and management has fully proved that claimant was supervisor and not a workman by his documentary evidence as well as by his oral evidence. The claimant could produce evidence of any other employee of the respondent management who could support his case. He has not produced any other oral evidence to prove his case on issue No. 1. Rather he tried to conceal the facts which are on records. In the above circumstances as discussed the finding of issue No. 1 goes in favour of the respondent management and against the claimant and hold that the claimant does not come under the definition of 2 (5) of the I. D. Act, 1947 and this court has no jurisdiction to give any relief to the claimant.

The second issue is about the justification of order of termination, . After giving my findings on issue No. 1 in favour of the respondent management, there is not need of discussions on issue No. 2. No order as to costs. This may be read as answer of this reference.

Dated the 13th July, 1981.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endorsement No. 2391, dated the 31st July, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

No. 9(1)81-8Lab/8956.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Haryana State Electricity Board through Chief Engineer, Thermal Power House, Faridabad :—

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 114 of 1979

*between*

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF HARYANA STATE ELECTRICITY BOARD THROUGH CHIEF ENGINEER, THERMAL POWER HOUSE, FARIDABAD.

*Present .—*

Shri S. R. Gupta, for the workman.

Shri Narinder Pal Singh for the management.

#### AWARD

By order No. FD/187-78/14248, dated 27th March, 1979, the Governor of Haryana referred the following dispute between the management of Haryana State Electricity Board through Chief Engineer, Thermal Power House, Faridabad and its workman Shri Om Parkash, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Om Parkash was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices, were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed on 30th November, 1979 :—

1. Whether the workman is entitled to back wages. ?
2. Relief ?

At the time of framing issues it was found that according to the written statement the management had taken the workman on duty. There remained only question of back wages for adjudication, therefore, the case was fixed for the evidence of the workman. He examined himself as WW-1 and Shri Azad Singh as WW-2. The management examined Shri Vishnu Bhagwan, S.O. as MW-1, Shri V.P. Parbhakar, S.O. as MW-2, Shri G.K. Bhatia as MW-3, Shri Avtar Singh, SDO as MW-4 and Shri C.D. Rajpaul as MW-5 and closed its case. Arguments were heard. I now give my finding issueswise :—

**Issue No. 1.**—The concerned workman stated that in February, 1976 he had proceeded on sanctioned leave on 17 days on account of illness of his mother. He applied for extension of leave for prolonged illness of his mother. In June, 1976, he reported for duty and produced Exhibit W-1 to the authorities. Certificate Exhibit W-1 was not received and he was not given duty. He then submitted demand notice, Exhibit W-2. He was taken on duty after the present reference, therefore, he wanted back wages. In cross-examination he stated that he went on leave without pay on 12th February, 1976 for 17 days. He was to report on 1st March, 1976. He did not remember the date on which the extension was applied but he sent application for extension only once. He had applied for 15 days extension. He did not inform the management for further extension of leave. He further stated that he met Executive Engineer Shri Kapoor with Exhibit W-1. Shri Kapoor wanted to terminate his services because he had refused to work at his house. The Chief Engineer and Superintending Engineer were approached but they declined his request saying that the Executive Engineer was the proper authority. No representation in writing was sent to anybody. He did not represent in writing during 1976 and 1978. He was called to join duty,—vide Exhibit W-3 and the authority asked him to submit leave application for the entire period of idleness to regularise his service but he did not agree to submit leave application. He denied the suggestion that his services were not terminated rather he abandoned his job. WW-2 stated that he belonged to the village of the concerned workman. In 1976 he had brought application of the concerned workman for extension of leave and handed it over to Shri Kapoor the then Executive Engineer. Shri Kapoor had told that he would do the needful. In cross-examination he stated that he did not remember the date when the application was handed over to the Executive Engineer. It might be 2nd or 3rd month of the year. He was cousin of the concerned workman. He further replied that normally leave applications are given to one's superior but in this case leave application was submitted direct to the Executive Engineer because he was so directed by the concerned workman. He denied the suggestion that he was making a wrong statement and no leave application was sent.

MW-1 stated that the workman was working under him from April, 1975 to March, 1976. He had proceeded on leave from 12th February, 1976 to 4th March, 1976. He did not report for duty after expiry of leave nor any intimation for leave was received by him. Copy of attendance roll was Exhibit M-1. The name of the workman was removed from 17th March, 1976 and another man was kept in his place in April, 1976. In cross-examination he stated that he was Incharge of the branch upto 31st March, 1976. He did not know if the workman reported for duty to the another incumbent of his post. He did not know if the workman had sent any application after 31st March, 1976. He admitted that Shri Azad Singh WW-2 was an employee of the Thermal Plant in those days and Shri Kapoor was his Executive Engineer. MW-2 stated that he took charge of this section from MW-1 from April, 1976 and continued till 17th July, 1977. He knew the concerned workman as he had joined civil department after 1978. He further stated that the concerned workman did

not report for duty in the month of April or thereafter, nor he received any application from him. In cross-examination he stated that Shri Kapoor was the then Executive Engineer. He was the appointing authority of the workman. He did not know if one Azad Singh was in service during those days. He had seen, Exhibit W-1 for the first time in the Court. Exhibit W-3 bears signature of Shri S. L. Arora, Executive Engineer and so, Exhibit W-4, MW-3 stated that he was SDO Incharge of this Sub-Division from 1st April, 1975 to 20th May, 1976. He knew the concerned workman. He was a work-charged employee. He did not report for duty upto the time upto he remained in Sub-Division, nor he received any leave application for extension. In cross-examination he stated that he did not know if Shri Azad Singh saw Shri Kapoor in connection with extension of leave. MW-4 stated that he was SDO Thermal Colony, Faridabad. The workman concerned never approached him in June, 1976, nor any application was ever received by him. In cross-examination he stated that from 30th May, 1976 to 24th September, 1977, he was posted at Faridabad. The concerned workman never worked under him. MW-5 stated that he was posted as Head Clerk in the office of the Executive Engineer, Civil Maintenance since 1st March, 1975. He knew the concerned workman. He did not receive any leave application for extension after 4th March, 1976. Leave application was received first in the office of the SDO concerned and then after recommendation of the SDO was sent to his office. The workman never reported for duty after expiry of his leave.

In this case the only controversy is about application for extension of leave. According to the workman it was sent through his cousin WW-2 who also worked in the Thermal Plant. According to WW-2 application was submitted direct to the Executive Engineer, Shri Kapoor who was no longer in the employment of the management. The management on the other hand has produced the concerned SDO, Head Clerk and S.O. to prove that no such application was ever received by them and that the workman did not report for duty. I do not find any reason as to why the workman sent his application through such a messenger to the then Executive Engineer when he had strained relations with him according to his statement in Court. I also do not believe that application for leave etc., if received by the Executive Engineer was not sent to the proper official in the Sub-Division or Division as the case may be. Exhibit W-1 was a certificate regarding illness of the mother of the concerned workman from 1st March, 1976 to 28th June, 1976. She was reported under treatment of a Medical Practitioner at Rohtak. In case the workman had sent extension of leave there was no question of his coming with the certificate of illness of his mother because he could straight way join his duty on the expiry of leave. The workman has failed to prove the version of sending of extension application. He has already been taken on duty by the management. He was not entitled to any relief of back wages. This issue is, therefore, decided against the workman.

**Issue No. 2.**—The workman has already been reinstated by the management and the workman is not entitled to back wages.

While, answering the reference, I give my award that the workman has already been reinstated by the management and the workman is not entitled for back wages. I order accordingly.

Dated the 23rd July, 1981.

M. C. BHARDWAJ,  
Presiding Officer, Industrial  
Tribunal, Haryana, Faridabad.

No. 688, dated 25th July, 1981.

Forwarded (four copies), to the Secretary to Government, Haryana Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,  
Presiding Officer, Industrial,  
Tribunal, Haryana, Faridabad.